

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

MAGNUM MCALLEN, LLC
Plaintiff,

V.

**AMERICAN ECONOMY INSURANCE
COMPANY**
Defendant.

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Civil Action No. _____

AMERICAN ECONOMY INSURANCE COMPANY'S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

American Economy Insurance Company ("AEIC") files this Notice of Removal pursuant to 28 U.S.C. §1446(a) and respectfully shows the following:

Procedural Background

1. On April 9, 2010, Plaintiff filed its Original Petition and Request for Disclosures ("Original Petition") in the matter entitled *Magnum McAllen, LLC v. American Economy Insurance Company*, Cause No. C-1049-10E, in the 275th Judicial District, Hidalgo County, Texas.

Nature of the Suit

2. This lawsuit involves a dispute over the processing and payment of insurance benefits on claims for four properties made by Plaintiff on its commercial insurance policy issued by AEIC for water damage.

Basis for Removal

3. Removal is proper under 28 U.S.C. §1332 because there is complete diversity of citizenship between the Plaintiff and AEIC and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

4. There is complete diversity of citizenship between the parties. At the time Plaintiff filed its Original Petition on April 9, 2010, AEIC was an insurance company which was a citizen of the state of Indiana where it is incorporated. Accordingly, at the time of filing of this suit, and through the filing of this Notice, AEIC was and is considered an out-of-state citizen for diversity jurisdiction purposes. Upon information and belief, Plaintiff is a citizen of Texas when it filed its Original Petition, and continues to be a citizen of Texas.

5. Moreover, this Court has diversity jurisdiction over this matter because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Although the amount in controversy is not specified in Plaintiff's Petition, it is clear that the actual amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

6. Moreover, in determining the amount in controversy, the court may consider "policy limits ... penalties, statutory damages, and punitive damages." *St. Paul Reinsurance Co., Ltd v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see Ray*, 1999 WL 151667 at *2-3 (finding a sufficient amount in controversy in Plaintiffs' case against their insurance company for breach of contract, fraud, negligence, gross negligence, bad faith, violations of the Texas Insurance Code, violations of the Texas Deceptive Trade Practices Act, and mental anguish); *Fairmont Travel, Inc. v. George S. May Int'l Co., et. al.*, 75 F. Supp. 2d 666, 668 (S.D. Tex. 1999) (considering DTPA claims and the potential for recovery of punitive damages for the amount in controversy determination); *Chittick v. Farmers Insurance Exchange*, 844 F. Supp.

1153, 1155 (S.D. Tex. 1994) (finding a sufficient amount in controversy after considering the nature of the claims, the types of damages sought and the presumed net worth of the defendant in a claim brought by the insureds against their insurance company for actual and punitive damages arising from a claim they made for roof damages).

7. The general aggregate policy limit under the applicable policy is \$2,000,000. *See* Exhibit 1, the policy's declarations page, attached hereto. Plaintiff seeks actual and exemplary damages for its claims of breach of contract for four separate insurance claims, violations of the Texas Insurance Code, and violations of the Texas Deceptive Trade Practices Act. *See Plaintiff's Original Petition*. Further, Plaintiff seeks treble damages under the Deceptive Trade Practices Act and the Insurance Code for Defendants' alleged knowing conduct. *Id.* Thus, given the nature of Plaintiff's claims and the types of damages sought, it is more likely than not that the amount in controversy exceeds the federal jurisdictional minimum of \$75,000.00.

The Removal is Procedurally Correct

8. AEIC has not been served with the petition. AEIC first received notice that suit had been filed when Plaintiff's counsel forwarded a copy of the petition on September 27, 2010. Because suit was never properly served AEIC has timely filed this notice of removal as required by 28 U.S.C. §1446(b).

9. Venue is proper in this district under 28 U.S.C. §1446(a) because this district and division embrace the place in which the removed action has been pending and because a substantial part of the events giving rise to the Plaintiff's claims allegedly occurred in this district.

10. Pursuant 28 U.S.C. §1446(a), all pleadings, process, orders, and all other filings in the state court action are attached to this notice.

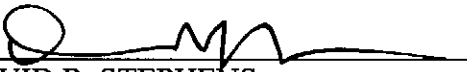
11. Pursuant 28 U.S.C. §1446(d), promptly after AEIC files this Notice, written notice of the filing of this Notice for Removal will be given to Plaintiff, the adverse party.

12. Pursuant 28 U.S.C. §1446(d), a true and correct copy of this Notice will be filed with the Clerk of the 275th Judicial District Court of Hidalgo County, Texas, promptly after AEIC files this Notice.

WHEREFORE, AEIC requests that this action be removed from the 275th Judicial District Court of Hidalgo County, Texas to the United States District Court for Southern District of Texas, McAllen Division, and that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

LINDOW STEPHENS TREAT LLP
600 Navarro, 6th Floor
San Antonio, Texas 78205
Telephone: (210) 227-2200
Telecopier: (210) 227-4602



DAVID R. STEPHENS
State Bar No. 19146100
Southern District Bar No. 21360

ATTORNEYS FOR DEFENDANT
AMERICAN ECONOMY INSURANCE
COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Removal was filed electronically with the United States District Court for the Southern District of Texas, McAllen Division, with notice of case activity to be generated and sent electronically by the Clerk of the Court with ECF notice being sent and a copy mailed *via certified mail* on this 29th day of **September 2010**, addressed to those who do not receive notice from the Clerk of the Court.

Vicente Gonzalez
V. GONZALEZ & ASSOCIATES, P.C.
1548 Dove Avenue
McAllen, Texas 78504



DAVID R. STEPHENS

EXHIBIT 1

REPRINTED FROM THE ARCHIVE. THE ORIGINAL TRANSACTION MAY INCLUDE ADDITIONAL FORMS
 AMERICAN ECONOMY INSURANCE COMPANY
 SEATTLE, WASHINGTON

COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

PAGE CP 1

NAMED INSURED: MAGNUM MCALLEN, LLC

POLICY NUMBER: 25-CC-152395-2

MAXIMUM LIMIT OF INSURANCE: \$ 12,546,000**

** THIS MAXIMUM LIMIT MAY INCLUDE CERTAIN "ON-PREMISES INLAND MARINE" COVERAGE(S). IF FORM CP7547--ACTUAL LOSS SUSTAINED BUSINESS INCOME COVERAGE IS INCLUDED, IT IS AN ADDITIONAL AMOUNT OF INSURANCE AND NOT INCLUDED IN THE MAXIMUM LIMIT. REFER TO THE PEAK EXTRA LIMITS SUMMARY FORM(S) FOR A COMPLETE DEFINITION OF "MAXIMUM LIMIT".

PREMISES 1 2651 CORNERSTONE BLVD
 EDINBURG, TX 78539

BUILDING 1 AMERICAN ECONOMY INSURANCE COMPANY
 OCCUPANCY: CLUBS - TENNIS OR RACQUET CLUB

APPLICABLE TO THIS BUILDING	LIMIT OF INSURANCE	DEDUCTIBLE	RATE	PREMIUM
BUILDING	INCLUDED IN MAXIMUM LMT	\$ 2,500		
SPECIAL CAUSES OF LOSS			\$.442	\$ 17,026.00
CERTIFIED ACTS OF TERRORISM			.002	77.00
REPLACEMENT COST				
BUSINESS INCOME RENTAL VALUE ONLY	INCLUDED IN MAXIMUM LMT	2,500		
SPECIAL CAUSES OF LOSS			.290	1,177.00
CERTIFIED ACTS OF TERRORISM			.001	4.00
EQUIPMENT BREAKDOWN COVERAGE INCLUDED AT ALL BUILDINGS AT PREMISES			1 \$	510.00
DIRECT DAMAGE DEDUCTIBLE		\$ 2,500		
INDIRECT DAMAGE DEDUCTIBLE		24 HOURS		

OTHER INTERESTS SUBJECT TO PROVISIONS OF CLAUSE(S) DESIGNATED BELOW:

MORTGAGE INTER NATIONAL BANK
 HOLDER 1801 S 2ND ST
 CLAUSE: MCALLEN, TX 78503
 40351

COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

PAGE CP 2

NAMED INSURED: MAGNUM MCALLEN, LLC

POLICY NUMBER: 25-CC-152395-2

PREMISES 2 5423 S MCCOLL ROAD
MCALLEN, TX 78539BUILDING 1 AMERICAN ECONOMY INSURANCE COMPANY
OCCUPANCY: CLUBS - TENNIS OR RACQUET CLUB

APPLICABLE TO THIS BUILDING	LIMIT OF INSURANCE	DEDUCTIBLE	RATE	PREMIUM
BUILDING	INCLUDED IN MAXIMUM LMT	\$ 2,500		
SPECIAL CAUSES OF LOSS			\$.206	\$ 3,034.00
CERTIFIED ACTS OF TERRORISM			.002	29.00
REPLACEMENT COST				
BUSINESS INCOME RENTAL VALUE ONLY	INCLUDED IN MAXIMUM LMT	2,500		
SPECIAL CAUSES OF LOSS			.142	216.00
CERTIFIED ACTS OF TERRORISM			.001	2.00
EQUIPMENT BREAKDOWN COVERAGE INCLUDED AT ALL BUILDINGS AT PREMISES		2 \$		258.00
DIRECT DAMAGE DEDUCTIBLE	\$ 2,500			
INDIRECT DAMAGE DEDUCTIBLE	24 HOURS			

OTHER INTERESTS SUBJECT TO PROVISIONS OF CLAUSE(S) DESIGNATED BELOW:

MORTGAGE INTER NATIONAL BANK
HOLDER 1801 S 2ND ST
CLAUSE: MCALLEN, TX 40351
40351

COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

PAGE CP 3

NAMED INSURED: MAGNUM MCALLEN, LLC

POLICY NUMBER: 25-CC-152395-2

PREMISES 3 1201 E RIDGE RD
MCALLEN, TX 78503

BUILDING 1 AMERICAN ECONOMY INSURANCE COMPANY
OCCUPANCY: CLUBS - TENNIS OR RACQUET CLUB

APPLICABLE TO THIS BUILDING	LIMIT OF INSURANCE	DEDUCTIBLE	RATE	PREMIUM
BUILDING	INCLUDED IN MAXIMUM LMT	\$ 2,500		
SPECIAL CAUSES OF LOSS			\$.546	\$ 16,084.00
CERTIFIED ACTS OF TERRORISM			.002	59.00
REPLACEMENT COST				
BUSINESS INCOME RENTAL VALUE ONLY	INCLUDED IN MAXIMUM LMT	2,500		
SPECIAL CAUSES OF LOSS			.357	1,086.00
CERTIFIED ACTS OF TERRORISM			.001	3.00
EQUIPMENT BREAKDOWN COVERAGE INCLUDED AT ALL BUILDINGS AT PREMISES			3 \$	412.00
DIRECT DAMAGE DEDUCTIBLE		\$ 2,500		
INDIRECT DAMAGE DEDUCTIBLE		24 HOURS		

OTHER INTERESTS SUBJECT TO PROVISIONS OF CLAUSE(S) DESIGNATED BELOW:

MORTGAGE INTER NATIONAL BANK
HOLDER 1801 S 2ND ST
CLAUSE: MCALLEN, TX 40351
40351

COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

PAGE CP 4

NAMED INSURED: MAGNUM MCALLEN, LLC

POLICY NUMBER: 25-CC-152395-2

PREMISES 4 1718 E GRIFFIN PKWY
MISSION, TX 78572BUILDING 1 AMERICAN ECONOMY INSURANCE COMPANY
OCCUPANCY: CLUBS - TENNIS OR RACQUET CLUB

APPLICABLE TO THIS BUILDING	LIMIT OF INSURANCE	DEDUCTIBLE	RATE	PREMIUM
BUILDING	INCLUDED IN MAXIMUM LMT	\$ 2,500		
SPECIAL CAUSES OF LOSS			\$.530	\$ 16,213.00
CERTIFIED ACTS OF TERRORISM			.002	61.00
REPLACEMENT COST				
BUSINESS INCOME RENTAL VALUE ONLY	INCLUDED IN MAXIMUM LMT	2,500		
SPECIAL CAUSES OF LOSS			.347	1,089.00
CERTIFIED ACTS OF TERRORISM			.001	3.00
EQUIPMENT BREAKDOWN COVERAGE INCLUDED AT ALL BUILDINGS AT PREMISES			4 \$	412.00
DIRECT DAMAGE DEDUCTIBLE		\$ 2,500		
INDIRECT DAMAGE DEDUCTIBLE		24 HOURS		

OTHER INTERESTS SUBJECT TO PROVISIONS OF CLAUSE(S) DESIGNATED BELOW:

MORTGAGE INTER NATIONAL BANK
HOLDER 1801 S 2ND ST
CLAUSE: MCALLEN, TX 78503
40351

COMMERCIAL PROPERTY TOTAL

\$ 57,755.00

A PREMIUM OF \$ 238.00 IS INCLUDED IN THE TOTAL ABOVE FOR CERTIFIED ACTS OF TERRORISM.

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 FIRST NATIONAL INSURANCE CO. OF AMERICA
 SEATTLE, WASHINGTON

COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

PAGE CG 1

NAMED INSURED: MAGNUM MCALLEN, LLC

POLICY NUMBER: 25-CC-152395-2

FORM OF BUSINESS: ORGANIZATION OTHER THAN A PARTNERSHIP OR JOINT VENTURE

 L I M I T S O F I N S U R A N C E

COMMERCIAL GENERAL LIABILITY	
GENERAL AGGREGATE LIMIT (OTHER THAN PRODUCTS-COMPLETED OPERATIONS)	\$2,000,000
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT	\$2,000,000
PERSONAL AND ADVERTISING INJURY LIMIT	\$1,000,000
EACH OCCURRENCE LIMIT	\$1,000,000
DAMAGE TO PREMISES RENTED TO YOU (ANY ONE PREMISES)	\$1,000,000
MEDICAL EXPENSE LIMIT (ANY ONE PERSON)	\$ 10,000
EMPLOYMENT PRACTICES LIABILITY	
AGGREGATE LIMIT	\$ 10,000
EACH CLAIM LIMIT	\$ 10,000

RETROACTIVE DATE OF 03-29-07 APPLIES TO SECTION I OF THE EMPLOYMENT PRACTICES LIABILITY FORM. THIS INSURANCE DOES NOT APPLY TO ANY 'EMPLOYMENT PRACTICES' WHICH OCCURRED BEFORE THE RETROACTIVE DATE.

CODE	CLASSIFICATION-PREMIUM BASIS	EXPOSURE	RATE	PREMIUM
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COMMERCIAL GENERAL LIABILITY OTHER THAN PRODUCTS-COMPLETED OPERATIONS

PREMISES 1

61217	BUILDINGS OR PREMISES - BANK OR OFFICE - MERCANTILE OR MANUFACTURING (LESSOR'S RISK ONLY) - MAINTAINED BY THE INSURED - OTHER THAN NOT-FOR-PROFIT INCLUDING PRODUCTS & COMPLETED OPERATIONS AREA (PER 1000 SQUARE FEET)	27,800	51.7470 \$	1,439.00
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PREMISES 2

61217	BUILDINGS OR PREMISES - BANK OR OFFICE - MERCANTILE OR MANUFACTURING (LESSOR'S RISK ONLY) - MAINTAINED BY THE INSURED - OTHER THAN NOT-FOR-PROFIT INCLUDING PRODUCTS & COMPLETED OPERATIONS AREA (PER 1000 SQUARE FEET)	12,000	51.7470	621.00
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PREMISES 3

61217	BUILDINGS OR PREMISES - BANK OR OFFICE - MERCANTILE OR MANUFACTURING (LESSOR'S RISK ONLY) - MAINTAINED BY THE INSURED - OTHER THAN NOT-FOR-PROFIT INCLUDING PRODUCTS & COMPLETED OPERATIONS AREA (PER 1000 SQUARE FEET)	23,258	51.7470	1,204.00
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COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

PAGE CG 2

NAMED INSURED: MAGNUM MCALLEN, LLC

POLICY NUMBER: 25-CC-152395-2

CODE	CLASSIFICATION-PREMIUM BASIS	EXPOSURE	RATE	PREMIUM
PREMISES 4				
61217	BUILDINGS OR PREMISES - BANK OR OFFICE - MERCANTILE OR MANUFACTURING (LESSOR'S RISK ONLY) - MAINTAINED BY THE INSURED - OTHER THAN NOT-FOR-PROFIT INCLUDING PRODUCTS & COMPLETED OPERATIONS AREA (PER 1000 SQUARE FEET)	24,000	51.7470	1,242.00

EMPLOYMENT PRACTICES LIABILITY

PREMISES NA

00234	EMPLOYMENT PRACTICES LIABILITY (PER UNIT)		\$	38.00
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PREMIUM ADJUSTMENTS:

CERTIFIED ACTS OF TERRORISM	\$	41.00
COMMERCIAL GENERAL LIABILITY TOTAL	\$	4,585.00